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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 THOMAS MARTINEZ and MICHAEL
CABRERA, individually and as
11 representatives of the Class,

12 Plaintiffs,

13 v.

14 PPG INDUSTRIES, INC.,

15 Defendant.

Case No. 3:16-cv-2535

**NOTICE OF REMOVAL OF CIVIL
ACTION BY DEFENDANT PPG
INDUSTRIES, INC. AND DEMAND FOR
JURY
[28 U.S.C. §§ 1331, 1441(A) & 1446]**

Complaint Filed: April 1, 2016
(Alameda Superior Court Case No.
RG16809889)

**TO THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446, Defendant PPG INDUSTRIES, INC. (“PPG”), contemporaneously with the filing of this Notice of Removal of Civil Action (“Notice of Removal”), hereby removes this action to the United States District Court for the Northern District of California, based on the following facts:

I.

PLEADINGS AND PROCEEDINGS TO DATE

1. On April 1, 2016, Plaintiffs Thomas Martinez and Michael Cabrera (“Plaintiffs”) filed a Complaint in the Alameda Superior Court captioned: *Thomas Martinez and Michael Cabrera, individually and as representatives of the Class v. PPG Industries, Inc.*, designated as Case No. RG16809889. A true and correct copy of the Complaint is attached hereto as **Exhibit 1**. A true and correct copy of the Summons is attached as **Exhibit 2**. The action was served on April 22, 2016.

2. On May 10, 2016, PPG filed its Answer to the Complaint in the Superior Court. A true and correct copy of PPG’s Answer is attached hereto as **Exhibit 3**.

3. A true and correct copy of the remainder of the state court files are attached hereto as **Exhibit 4**.

4. Pursuant to 28 U.S.C. § 1446(d), the attached exhibits constitute all the process, pleadings and orders served upon PPG, filed or received in this action by PPG.

II.

STATEMENT OF REMOVAL JURISDICTION

5. This Court has original jurisdiction under 28 U.S.C. § 1331 (federal question) as Plaintiffs’ Complaint refers to and arises out of alleged violations of a federal statute, the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.* Specifically, Plaintiffs’ Complaint asserts that PPG violated the FCRA by allegedly “procuring consumer reports on Plaintiffs and Class members without making the stand-alone disclosure required by the FCRA.” (Complaint, ¶ 69.)¹

¹ PPG reserves all rights and does not waive its contention that Plaintiffs lack standing pursuant to Article III of the United States Constitution because they have no injury-in-fact.

6. Plaintiffs' other claim for relief under California statutory law (the California Investigative Consumer Reporting Agencies Act (ICRAA), Cal. Civ. Code § 1786 *et seq.*) is within the supplemental jurisdiction of this Court under 29 U.S.C. § 1367(a), because it is so related to the FCRA claim that it forms part of the same case or controversy under Article III of the United States Constitution. Plaintiffs' state law claim is derivative of their FCRA claim since it "derive[s] from a common nucleus of operative fact and [is] such that a plaintiff would ordinarily be expected to try them in one judicial proceeding." *Kuba v. I-A Agric. Ass'n*, 387 F. 3d 850, 855 (9th Cir. 2004). Jurisdiction is thus appropriate for all of Plaintiffs' claims that are transactionally related to the federal claim.

III.

TIMELINESS OF REMOVAL

7. An action may be removed from state court by filing a notice of removal, together with a copy of all process, pleadings, and orders served on the defendant, within thirty days of defendant receiving an "amended pleading, motion, order or other paper from which it may *first be ascertained* that the case is . . . removable." 28 U.S.C. § 1446(b) (emphasis added). Here, Plaintiffs filed their Complaint on April 1, 2016. On April 22, 2016, PPG was served with the Complaint and Summons. As such, this Notice of Removal is timely since it was filed within thirty days of service of the Summons and Complaint.

IV.

VENUE

8. Venue is appropriate in this Court for purposes of this removal because the action was removed from the Superior Court of California for the County of Alameda to the District embracing the place where the action is pending pursuant to 28 U.S.C. §§ 84(c)(2), 1391, and 1441(a).²

V.

NOTICE TO COURT AND TO PARTIES

9. Contemporaneously with the filing of this Notice of Removal, written notice of the removal is given by the undersigned to counsel for Plaintiffs. In addition, a copy of this Notice of

² PPG reserves all rights with regard to seeking a potential change of venue.

1 Removal will be filed with the Clerk of the Alameda Superior Court. A copy of the Notice to be
2 filed with the Clerk of the Alameda Superior Court is attached hereto as **Exhibit 5**.

3 **VI.**

4 **CONCLUSION**

5 WHEREFORE, PPG removes the action now pending in the Alameda Superior Court to this
6 Honorable Court.

7 **VII.**

8 **JURY DEMAND**

9 PPG demands a jury of all claims triable to a jury.

10 Dated: May 11, 2016
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12
13 /s/ Alison S. Hightower

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